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State Bar No. 003441 (Inactive Status)

IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of PETITION TO)	
AMEND RULE 45)	R-05-0034
)	
)	SUPPLEMENTAL
)	COMMENT ON PETITION
)	

I am submitting this supplemental comment in opposition to the proposed amendment to Supreme Court Rule 45 relating to members returning from inactive status. This supplemental comment addresses additional rationalizations advanced by the State Bar in its Questions and Answers posted on its website. The basis of the Petition to amend Rule 45 was set forth on page 2 of the Petition. The stated reason was to close the perceived loophole that allowed members to jump from active to inactive status to avoid annual MCLE requirements. The additional rationalizations were not the basis of the Petition submitted by the Chief Bar Counsel, and should not be considered by this Court. Should this Court nevertheless consider the additional rationalizations advanced by the Stage Bar, I respectfully submit the following supplemental comments.

1. Requirement to Pay Back Dues.

The State Bar states in its Q&A No. 3 that the Board believes that lawyers who reactivate from "inactive" or "retired" status should pay some back dues. The Bar continues that these members benefit from the programs and services which have been funded, at least in part, by dues paid by active members while the reactivating members were inactive or retired. It seemed appropriate to require some back payment of dues upon reactivation to reduce this partial indirect subsidy.

Ignored in this statement is that inactive members still pay dues, though at a lesser rate. There is no evidence that inactive members receive a disproportionate share of programs and services. The Q&A did not even list the programs and services that are made available to inactive members, how the cost of those services relate to inactive (or retired) members, or how active members have been subsidizing inactive members.

Without a study, of which there is no evidence, how would the Bar know the opposite is not true, that dues paid by inactive members are actually subsidizing active members. Personally, I have not received anything from the State Bar since becoming inactive that even would justify the dues currently charged.

2. Inactive Members are Incompetent to Practice Without MCLE.

Q&A No. 4. tries to change the focus from the stated reason in the Petition for proposing the amendment to Rule 45 from closing the perceived “loophole” to trying to ensure all lawyers returning to active status are up-to-date on current law. If this was the reason for proposing the amendment, why was it not mentioned in the Petition. Has there been an issue of incompetent inactive members returning to active status? If there is, which is doubtful, there are better ways of addressing that issue than force the member to take 45 hours of MCLE in short order. (See, State Bar’s answer to Question No. 6 stating that “[a] lawyer who wants to reactivate can complete the required number of MCLE hours in a relatively short period of time.

Compressing that many required hours into a short period will only ensure that the lawyer will take whatever seminars he needs to to get to the 45 hours. This requirement will not ensure competence for an incompetent lawyer. A competent lawyer will take whatever steps necessary, on his own, to make sure he is up-to-date. Many inactive lawyers who do not currently practice

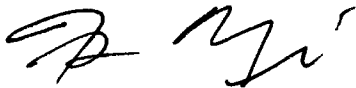
Question 4 also asked why not just why not penalize those people who are trying to avoid MCLE. The Bar replied that the new requirements are:

“... not a penalty, but an effort to ensure that all lawyers returning to "active" status are up-to-date on current law.

By not addressing the members who go on inactive status to avoid MCLE, the State Bar appears to be condoning the unauthorized practice of law by the momentarily inactive members during the period they are inactive.

The amendment regarding Rule 45 is ill advised and not well thought out. I respectfully requested that the Court not adopt the proposed amendment.


DATED this 21st day of May, 2006.



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A copy of this comment has been e-mailed this 21st day of May, 2006, to:

Robert B. Van Wyck, Chief Bar Counsel,
State Bar of Arizona
Thru the State Bar Website.



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